

Editor's note: Appealed -- aff'd, Civ. No. 76-338-P (D.N.M. Feb. 22, 1977), aff'd No. 77-1228 (10th Cir. Sept. 19, 1977)

MICHAEL SHEARN

IBLA 76-332

Decided March 29, 1976

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease offer NM-A 26895 (Oklahoma).

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Generally -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Future and Fractional Interests Leases

An acquired lands oil and gas lease offer for lands in which the United States owns only a fractional mineral interest is defective and is properly rejected when the applicant fails to accompany his offer with the statement required by the regulation showing the extent of his ownership of operating rights to the fractional mineral interest not owned by the United States.

APPEARANCES: A. D. Solsberry, Esq., Robert H. Strand, Esq., and W. John Weaver, Esq., of Roswell, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Michael Shearn has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated October 28, 1975, which rejected his noncompetitive acquired lands oil and gas lease offer NM-A 26895 (Oklahoma) filed as a drawing entry card for parcel 209 in response to the September 15, 1975, notice of lands available for oil and gas filings.

Appellant's offer was drawn first in the drawing held October 10, 1975, in the New Mexico State Office pursuant to the procedures in 43 CFR Subpart 3112. The United States owns a 50 percent mineral

interest in the lands designated as parcel 209, a fact clearly indicated in the September 15 notice of lands available. The offer was rejected because the offeror did not file an accompanying statement required by 43 CFR 3103.4-4 showing the extent of his ownership of the operating rights to the fractional mineral interest not owned by the United States.

The pertinent regulation, 43 CFR 3130.4-4, states:

Fractional present interests.

An offer for a fractional present interest noncompetitive lease must be executed on a form approved by the Director and it must be accompanied by a statement showing the extent of the offeror's ownership of the operating rights to the fractional mineral interest not owned by the United States in each tract covered by the offer to lease. Ordinarily, the issuance of a lease to one who, upon such issuance, would own less than 50 percent of the operating rights in any such tract, will not be regarded as in the public interest, and an offer leading to such results will be rejected. [Emphasis supplied.]

[1] We have repeatedly emphasized that this regulatory requirement is mandatory. Where the United States owns only a fractional mineral interest in the land, the offeror must accompany the offer with a statement showing the extent of the offeror's ownership of the operating rights in the fractional mineral interest not owned by the United States. Where there is no such accompanying statement the offer must be rejected. Margaret Hughey Hugus, 22 IBLA 146 (1975); George H. Isbell, Jr., 20 IBLA 312 (1975); James H. Scott, 18 IBLA 55 (1974); Michigan Wisconsin Pipe Line Co., 17 IBLA 282 (1974); Arthur E. Meinhart, 11 IBLA 138, 80 I.D. 395 (1973). The regulation is clear and free from ambiguity and cannot be disregarded. Michigan Wisconsin Pipe Line Co., *supra*. It is applicable to both simultaneous and over-the-counter filings. Arthur E. Meinhart, *supra*.

Appellant argues, *inter alia*, that the notice of September 15, 1975, specifically states that filing on parcels listed therein must be made on a simultaneous oil and gas drawing entry card form 3112.1 and the card contains no reference to the requirement of 43 CFR 3130.4-4, nor is there any place on the card where such a statement may be written. He contends this direction should be held to constitute a waiver of the requirements.

There is no merit in this argument. Appellant can hardly claim a lack of adequate notice of the mandatory regulatory requirement, when the notice of sale clearly stated in bold print:

ON THOSE PARCELS WHERE THE UNITED STATES OWNS LESS THAN
100 PERCENT INTEREST, OFFEROR MUST SUBMIT A STATEMENT WITH
HIS OFFER AS TO WHETHER HE DOES OR DOES NOT OWN ANY OIL
AND GAS OPERATING RIGHTS IN THE INTERESTS NOT OWNED BY THE
UNITED STATES. (43 CFR 3130.4-4)

Further, the notice directs that this statement of ownership be submitted along with the offer rather than marked on the drawing entry card where appellant points to a lack of space to provide such information. Appellant has the obligation of filing the necessary statement in any manner possible.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Edward W. Stuebing
Administrative Judge

